

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE)	No. 64765-2-I
PERSONAL RESTRAINT OF:)	
JEREMY JOSEPH SIMMONS,)	DIVISION ONE
)	UNPUBLISHED OPINION
Petitioner.)	
)	FILED: May 17, 2010

PER CURIAM. Jeremy Simmons filed this personal restraint petition challenging the firearm enhancement to his sentence in King County Superior Court No. 02-1-10167-1 KNT. Although his judgment and sentence became final in 2005 when this court filed the mandate in his direct appeal, Simmons claims that his petition is not subject to the time bar of RCW 10.73.090 because the judgment and sentence is invalid on its face. RCW 10.73.090(1); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). In particular, the judgment and sentence imposes a five year firearm enhancement but a special verdict form indicates the jury found only that Simmons was “armed with a deadly weapon.” See, e.g., Goodwin, 146 Wn.2d at 866 (plea agreement documents may be considered in evaluating claim of facial invalidity).

The King County Prosecutor has conceded that the judgment and sentence is invalid on its face and Simmons is entitled to vacation of the firearm enhancement and remand to the trial court to impose the deadly weapon enhancement found by the jury. See, In re Pers. Restraint of Delgado,

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149 Wn. App. 223, 204 P.3d 936 (2009) (where State obtained special verdicts regarding use of deadly weapon, trial court's imposition of firearm enhancement not authorized by jury finding and resulted in actual prejudice of higher sentences).

We accept the concession. Accordingly, Simmons's firearm enhancement is vacated and the case is remanded to the trial court to impose a deadly weapon enhancement.

For the court:

Dupre, C. S.

Appelwhite, J.

Leach, A. C. J.